FEB 28 1991

District Director
Omaha District
Attn: Michelle Paschke

Assistant Chief Counsel
(Passthroughs & Special Industries) CC:PSI:8

Section 4052(b)(1)(B)(iv) exclusion

Revenue agent Michelle Paschke has requested guidance from this office concerning the application of the federal excise tax on trucks imposed by section 4051(a)(1) of the Code. Ms. Paschke wants to know whether, in the case of a vehicle that has been further manufactured, the taxpayer may, pursuant to section 4052(b)(1)(B)(iv) of the Code, exclude the value of used parts from the tax base when those parts have not previously been taxed. As an example, a taxpayer/fleet operator salvages certain parts from a truck chassis with a gross vehicle weight rating (GVWR) of 33,000 pounds or less (a vehicle not subject to tax because of its weight). The parts are given to a fabricator who uses them to rebuild a chassis owned by the fleet operator that has a GVWR of over 33,000 pounds (taxable). The rebuilt chassis will be used by the operator in its fleet.

Section 4051(a)(1) of the Code imposes on the first retail sale of certain automobile truck articles, including truck bodies and chassis (including in each case parts or accessories sold on or in connection therewith or with the sale thereof), a tax of 12 percent of the amount for which the article is sold.

Section 4051(a)(2) of the Code provides an exclusion for truck bodies and chassis suitable for use with a vehicle of 33,000 pounds or less GVW.

Pursuant to section 48.0-2(a)(4)(ii) of Manufacturers and Retailers Excise Tax Regulations, under certain circumstances, as where a person manufactures or produces a taxable article for another person who furnished material under an agreement whereby the person who furnished the materials retains title thereto and to the finished article, the person for whom the taxable article is manufactured or produced, and not the person who actually manufactures or produces it, will be considered the manufacturer.

District Director
Omaha District

Section 4052(a)(3)(A) of the Code provides that if any person uses an article taxable under section 4051 before the first retail sale of such article, then such person shall be liable for tax under section 4051 in the same manner as if such article were sold at retail by him.

Section 145.4052-1(c)(1) of the Temporary Excise Tax Regulations provides, in part, that if a person purchases a vehicle for which no tax was imposed under section 4051(a) and thereafter converts such vehicle into an article which would have been taxable under section 4051(a)(1) and uses it, such person shall be liable for the tax as if such article were sold at retail by such person. For example, a truck having a gross vehicle weight rating of 24,000 pounds is sold at retail. The purchaser adds a lift axle, thereby increasing the gross vehicle weight rating to 34,000 pounds. If the purchaser thereafter uses the vehicle the purchaser shall be liable for the tax as if such article were sold at retail.

Section 4052(b)(1)(B)(iv) of the Code provides that in determining the tax base for articles taxable under section 4051, the value of any component of the taxable article is excluded if (1) such component is furnished by the first user of such article, and (2) such component has been used before such furnishing.

For purposes of the now-repealed manufacturers tax on trucks, section 4216(f) of the Code provided an exclusion for used parts that was identical to the exclusion provided in section 4052(b)(1)(B)(iv). The purpose of section 4216(f) was to prevent taxing used components twice in a situation where, for example, a person builds a truck for a customer incorporating usable (previously taxed) parts from a wrecked vehicle owned by the customer. See S. Rep. No. 324, 89th Cong., 1st Sess. 45 (1965), 1965-2 C.B. 676,712.

Since the language of section 4216(f) was carried over intact as section 4052(b)(1)(B)(iv), and there is no committee language under section 4052 that is in opposition to the purposes originally stated for the exclusion, we must conclude that the purpose of section 4052(b)(1)(B)(iv) is the same as that of its predecessor. Even though the purpose of the law is to prevent double taxation, the statutory exclusionary language is very simple and direct and does not lend itself to an interpretation requiring that the component need be previously taxed. To require proof of such taxation would place a heavy, and administratively difficult, burden on the taxpayer.

District Director
Omaha District

Thus, for purposes of section 4052(b)(1)(B)(iv) of the Code, there is no requirement that the component be previously taxed in order for the value of it to be excluded from the tax.

We hope this response is helpful to Ms. Paschke and thank her for her concern in this matter.

This response is advisory only and does not represent an expression of the views of the Service as to the application of law, regulations, and precedents to the facts of a specific case.

Assistant Chief Counsel
(Passthroughs & Special Industries)

(signed) D. Michael Owens

By: _____
D. Michael Owens
Senior Technical Reviewer
Branch 8

CC: Michelle Pashke
Omaha District

OP:EX